EDITOR'S NOTE

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89- 1397

Supreme Court, U.S.
FILED
FEB 26 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

HUMBERTO SERGIO GARZA,
GARY BEN JORDAN & NOE MUNIZ, PETITIONERS

VS.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPENDIX TO PETITION

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ATTORNEYS FOR PETITIONERS

February 25, 1990

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TO PETITION FOR WRIT OF CERTIORARI

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-2485

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

V.

HUMBERTO SERGIO GARZA,
GARY BEN JORDAN,
NOE MUNIZ,
Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Texas

October 12, 1989

Before CLARK, Chief Judge, GEE and SMITH. Circuit Judges. GEE, Circuit Judge:

Today we decide whether certain improper statements made by a prosecutor during the closing argument to a jury were so prejudicial as to require reversal.

Facts

The appellants were convicted and sentenced to terms of imprisonment for conspiring to make and for making false statements and representations to federally licensed firearms dealers in violation of 18 U.S.C. Section 924(a) and 2. They appeal, claiming that certain comments made by the prosecuting attorney during closing argument were improper and prejudicial.

In response to an argument made by the lawyer for defendant Moraida -- who is not a party to this appeal -- the prosecutor argued and defense counsel objected as follows:

> [MR. MILNER]: Mr. Ramirez indicated that there was not enough evidence from which any jury could convict the defendant, Moraida, and that if any jury convicted him, they would be convicting an innocent man. I am here to assure you that if there were not sufficient evidence, Judge Vela would have directed a verdict of acquittal and this matter would not --

MR. YZAGUIRRE: We ask for mistrial on that, Your Honor. Now that is --

THE COURT: Objection is overruled. Motion is denied.

Ladies and gentlemen of the jury, any time that the attorneys make reference to the law and it is not consistent with that which I give you, you are to disregard what the attorneys told you.

MR. CISNEROS: With all due respect to this honorable jury, I strongly object on the grounds that he has implanted in the minds of these jurors the Court has determined that there is sufficient evidence to convict, Your Honor. At this time we ask the Court to instruct the jury to disregard that comment.

THE COURT: Request is denied.

MR. CISNEROS: Now we move for a mistrial.

THE COURT: Request is denied.

MR. YZAGUIRRE: Note our exception.

MR. MILNER: I feel compelled to complete my remark because it was incomplete. Were there not sufficient evidence, which if you believe it to be true, could support a verdict of guilty in

this case, the matter would not be before you. Now, whether you believe it or not --

MR. CISNEROS: Again object.

MR. YZAGUIRRE: Please caution the U.S. Attorney --

MR. CISNEROS: I ask the Court again to instruct the jury to disregard vigorously and also, Your Honor, at this time move for mistrial?

THE COURT: Denied. Objection is overruled.

MR. CISNEROS: My request for mistrial is also denied?

THE COURT: Denied.

MR. MILNER: You heard all the testimony. You decide whether the Defendant Moraida's guilt has been shown beyond a reasonable doubt. If you feel that it has, find so. If you don't, find him not guilty. No one is going to quarrel with your verdict.

Finally, with respect to Defendants Noe Muniz, Gary Ben Jordan, Humberto Sergio Garza and Fernando Pena. The battle lines are clearly drawn here. It is not even a matter of how do we interpret the evidence. It is a matter of black and white. Either they are lying or all the Government's witnesses are lying.

It is as simple as that. There is no in-between, middle ground.

Discussion

We will not overturn a conviction because of a prosecutor's jury argument unless the prosecutor's remarks were both inappropriate and harmful. United States v. Chase, 838 F.2d 743, 749 (5th Cir. 1988). As this court has previously stated, "[a] criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone." United States v. Lowenberg, 853 F.2d 295, 302 (5th Cir. 1988). Rather, we must analyze the closing argument in the context of the entire case to determine whether it affected substantial rights of the accused. See Chase at 749. We must decide whether as a result of the prosecutor's remarks serious doubt is cast on the correctness of the jury's verdict. United States v. Jones, 839 F.2d 1041, 1049 (5th Cir. 1988). In reaching this decision,

we must consider: "1) the magnitude of the prejudicial effect of the statements; (2) the efficacy of any cautionary instructions; and 3) the strength of the evidence of the defendants' guilt." United States v. Iredia, 866 F.2d 114, 117 (5th Cir. 1989).

Applying these criteria to the instant case we find that, though the prosecutor's remarks were inappropriate, they were not harmful to the appellants. The prosecutor's statements were made in direct response to the argument made by counsel for Moraida. The prosecutor specifically referred to and confined the comments here complained of to defendant Moraida. Only later did he mention defendants Jordan, Garza, and Muniz. There was a clear break between the end of the prosecutor's arguments regarding defendant Moraida and the beginning of his arguments regarding defendants Jordan, Garza and Muniz. Defendants Jordan, Garza, and

Muniz, were not prejudiced by the prosecutor's improper statements.

Further, the district judge cautioned the jury at the time the statements were made. In addition, at the close of the arguments, the district judge further instructed the jury:

> Remember I told you that what the attorneys told you in their opening statements was not evidence and what the attorneys told you in their final arguments was not evidence. When we began this trial I had no opinion. If ever during the course of this trial I gave you any reason to believe that I had an opinion about the case, you were to disregard it. As a matter of fact, I suppose under Federal rules I could possibly express an opinion. But I consider that to be an invasion of what is exclusively your province. So if I engaged in any conduct that caused you to believe that I had an opinion about this case, you are to disregard it.

These instructions effectively eliminated any prejudicial effect the prosecutor's statements might have had on the appellants.

Finally, there was sufficient evidence of appellants' guilt to sustain the jury's verdict. The prosecutor's statements were harmless.

We have examined the other contentions raised by the appellants and conclude that they do not merit discussion.

AFFIRM.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 88-2485

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HUMBERTO SERGIO GARZA,
GARRY BEN JORDAN, and
NOE MUNIZ, JR.,

Defendants-Appellants.

Appeal from the United States District Court for the Southern District of Texas

---

ON PETITION FOR REHEARING

(November 27, 1989)

Before CLARK, Chief Judge, GEE and SMITH, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/s/ Thomas Gee
United States Circuit Judge

United States of America vs. HUMBERTO SERGIO GARZA, DEFENDANT	United States District Court for the SOUTHERN DISTRICT OF TEXAS McALLEN DIVISION DOCKET NO. M-87-17-03

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date May 3, 1988

COUNSEL

X WITH COUNSEL Joe A. Cisneros

PLEA

X NOT GUILTY on December 23, 1987, at to Cts. 1 and 20-41.

FINDING & JUDGMENT

There being a verdict of X GUILTY. on April 1, 1988, as to Cts. 1,20-23,& 25-40.

Defendant has been convicted as charged of the offense(s) of Conspiracy to make false statements and representations to a federally licensed firearms dealer, in violation of 18 USC 924(a) and 371, on Count 1; and Making false statements and representations to a federally licensed firearms dealer, in violation of 18 USC 924(a) and 2, on Counts 20-23, and 25-40.

DATE OFFENSE COMMITTED: From on or about 12/15/82 to 4/10/86.

SEE PAGE 2 OF THIS INDICTMENT

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years and a $1,000 fine; 179 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision on Count 1. 5 yrs. and a $1,000 fine; 179 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision on Count 20; said sentence in Count 20 to run consecutively to the sentence imposed in Count 1. 5 years and a $1,000 fine; 179 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision on Count 21; imprisonment portion (5 years) of said

sentence in Count 21 to run concurrently, while the 179-day confinement and the $1,000 fine run consecutively, to the sentences imposed in Counts 1 and 20. 5 years and a $1,000 fine; execution of the imprisonment sentence suspended for 5 years probation with supervision, as to Counts 22, 23, and 25-40; said terms to run concurrently to each other and to Counts 1, 20, and 21, with the exception of the $1,000 fines, which are to run consecutively to each other and to Counts 1, 20, and 21. Total sentence to be imposed is 10 years custody of the Attorney General and a $21,000 fine; 537 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision, to commence upon release from confinement.

SPECIAL CONDITIONS OF PROBATION

The Court further orders the following terms and special conditions of probation: Timely payment of the $21,000 fine as directed by the U.S. Probation Officer.

The Court further imposes a $50.00 special monetary assessment on each of Counts 1, 22, 23, 26, 30-33, 37, 39, and 40, for a total of $550, pursuant to 18 USC 3013. On

motion of the Government, Counts 24 and 41 were dismissed as to this defendant on March 28, 1988.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

APPROVED AS TO FORM:
/s/

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
X U.S. District Judge

/s/ Filemon B Vela
Honorable Filemon B. Vela
Date 5/9/88

United States of America vs.
GARRY BEN JORDAN
DEFENDANT

United States District Court for the SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION
DOCKET NO. M-87-17-04

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date May 3, 1988

COUNSEL

X WITH COUNSEL Joe A. Cisneros

PLEA

X NOT GUILTY on December 23, 1987, at to Counts 1-19.

FINDING & JUDGMENT

There being a verdict of X GUILTY. on April 1, 1988, as to Counts 1-18.

Defendant has been convicted as charged of the offense(s) of Conspiracy to make false statements and representations to a federally licensed firearms dealer, in violation of 18 USC 924(a) and 371, on Count 1; and Making false statements and representations to a federally licensed firearms dealer, in violation of 18 USC 924(a) and 2, on Counts 2-19.

DATE OFFENSE COMMITTED: From on or about 12/15/82 to 4/10/86.

SEE PAGE 2 OF THIS INDICTMENT

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years and a $1,000 fine; 179 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision on Count 1. 5 yrs. and a $1,000 fine; 179 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision on Count 2; said sentence in Count 2 to run consecutively to the sentence imposed in Count 1. 5 years and a $1,000 fine; 179 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision on Count 3; imprisonment portion (5 years) of said sentence in

Count 3 to run concurrently, while the 179-day confinement and the $1,000 fine run consecutively, to the sentences imposed in Counts 1 and 2. 5 years and a $1,000 fine; execution of the imprisonment sentence suspended for 5 years probation with supervision, as to Counts 4-18; said terms to run concurrently to each other and to Counts 1, 2 and 3, with the exception of the $1,000 fines, which are to run consecutively to each other and to Counts 1, 2, and 3. Total sentence to be imposed is 10 years custody of the Attorney General and a $18,000 fine; 537 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision, to commence upon release from confinement.

SPECIAL CONDITIONS OF PROBATION

The Court further orders the following terms and special conditions of probation: Timely payment of the $18,000 fine as directed by the U.S. Probation Officer.

The Court further imposes a $50.00 special monetary assessment on each of Counts 1-3, 7, 8, 10, and 14-18, for a total of $550, pursuant to 18 USC 3013. On motion of the Government, Count 19 was

dismissed as to this defendant on March 28, 1988.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

APPROVED AS TO FORM:
/s/

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
X U.S. District Judge

/s/ Filemon B Vela
Honorable Filemon B. Vela
Date 5/9/88

United States of America vs. NOE MUNIZ, DEFENDANT	United States District Court for the SOUTHERN DISTRICT OF TEXAS McALLEN DIVISION DOCKET NO. M-87-17-06

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date May 3, 1988

COUNSEL

X WITH COUNSEL Joe A. Cisneros

PLEA

X NOT GUILTY on December 23, 1987, at to Counts 1 and 42-59.

FINDING & JUDGMENT

There being a verdict of X GUILTY. on April 1, 1988, as to Cts. 1 and 42-59.

Defendant has been convicted as charged of the offense(s) of Conspiracy to make false statements and representations to a federally licensed firearms dealer, in violation of 18 USC 924(a) and 371, on Count 1; and Making false statements and representations to a federally licensed firearms dealer, in violation of 18 USC 924(a) and 2, on Counts 42-59.

DATE OFFENSE COMMITTED: From on or about 12/15/82 to 4/10/86.

SEE PAGE 2 OF THIS INDICTMENT

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years and a $1,000 fine; 179 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision on Count 1. 5 yrs. and a $1,000 fine; 179 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision on Count 42; said sentence in Count 42 to run consecutively to the sentence imposed in Count 1. 5 years and a $1,000 fine; 179 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision on Count 43; imprisonment portion (5 years) of said

sentence in Count 43 to run concurrently, while the 179-day confinement and the $1,000 fine run consecutively, to the sentences imposed in Counts 1 and 42. 5 years and a $1,000 fine; execution of the imprisonment sentence suspended for 5 years probation with supervision, as to Counts 44-59; said terms to run concurrently to each other and to Counts 1, 42, and 43, with the exception of the $1,000 fines, which are to run consecutively to each other and to Counts 1, 42, and 43. Total sentence to be imposed is 10 years custody of the Attorney General and a $19,000 fine; 537 days to serve, the balance of the imprisonment sentence suspended for 5 years probation with supervision, to commence upon release from confinement.

SPECIAL CONDITIONS OF PROBATION

The Court further orders the following terms and special conditions of probation: Timely payment of the $19,000 fine as directed by the U.S. Probation Officer.

The Court further imposes a $50.00 special monetary assessment on each of Counts 1, 43, 51-57, and 59, for a total of $500.00, pursuant to 18 USC 3013.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

APPROVED AS TO FORM:
/s/ _____

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
X U.S. District Judge

/s/ Filemon B Vela
Honorable Filemon B. Vela
Date 5/9/88

NO. 88-2485

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPEAL OF CRIMINAL NO. M-87-17	FROM THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS McALLEN DIVISION

THE UNITED STATES OF AMERICA,	PLAINTIFF-APPELLEE
VS.	
HUMBERTO SERGIO GARZA GARY BEN JORDAN NOE MUNIZ	DEFENDANTS-APPELLANTS

APPELLANTS' FIRST PETITION FOR
PANEL REHEARING

TO THE HONORABLE COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Each of the above appellants files this petition seeking a rehearing in this cause, for the following reasons:

FIRST REHEARING POINT

The court of appeals reversibly erred in finding (Slip Opinion at 5) the prosecutor's challenged statements were harmless, when the prosecutor's heated use in the jury's presence of the imprimatur of the trial judge's legal sufficiency finding is just too prejudicial as to not cast serious doubt on the correctness of the verdict rendered after the jury rejected the appellant's testimony and opted to believe the Government's witnesses.

SECOND REHEARING POINT

The court of appeals reversibly erred in finding (Slip Opinion at 5) there was sufficient evidence of appellants' guilt to sustain the jury's verdict, when as to each appellant the evidence was insufficient to support conviction on at least one count as pointed out in appellants' original point of error no. 4.

THIRD REHEARING POINT

The court of appeals reversibly erred in effectively overruling appellants' original points of error nos. 2, 3 and 4 for:

A. there was jury misconduct that tainted the panel and necessitated a new trial;

B. the special assessment law is unconstitutional and appellants' ought not to be required $50 per count of conviction; and/or

C. there was insufficient evidence to support at least one conviction of each appellant.

ARGUMENT

Appellants hereby incorporate each argument advanced in their original brief which is on file with the court of appeals.

PRAYER

For the foregoing reasons, appellants respectfully request this Honorable Court to grant rehearing, reverse the appellants'

convictions and remand the case with adequate instructions.

Respectfully submitted this 8th day of November, 1989.

Respectfully submitted by
Appellant's Attorneys,

/s/
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(512) 687-8217

CERTIFICATE OF SERVICE

I, JOSEPH A. CONNORS III, certify that on this the 8th day of November, 1989, three true copies of the foregoing Appellants' First Petition For Panel Rehearing were mailed to Appellee's attorney of record, Mr. Henry K. Oncken, United States Attorney,

Attn: Ms. Paula C. Offenhauser at Appellate Division, P.O. Box 61129, Houston, Texas 77208-1129; and one true copy thereof to appellants.

/s/
JOSEPH A. CONNORS III

No. 88-2485

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPEAL OF CRIMINAL NO. M-87-17

FROM UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS McALLEN DIVISION

THE UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE

VS.

HUMBERTO SERGIO GARZA
GARY BEN JORDAN
NOE MUNIZ

DEFENDANTS-APPELLANTS

[Note: In that brief, the appellants' four points of error read as follows: see next page]

POINT OF ERROR NO. 1

The district court reversibly erred in refusing to grant a mistrial upon the prosecutor's improper statement during final argument (18R. 2000).

POINT OF ERROR NO. 2

The district court erred on failing to grant appellant's mistrial request upon jury misconduct (16R. 1845-1854). (See also 13R. 1239-1245; 14R. 1499-1501; 17R. 1806-1854; 16R. 1727-1731).

POINT OF ERROR NO. 3

As to each appellant, the district court reversibly erred in imposing a $50.00 special monetary assessment pursuant to 18 U.S.C. 3013 (1R. 168-171b), since that 1984 revenue——raising special assessment measure, which originated in the Senate, is in violation of the U.S. Constitution's Article 1, § 7, cl. 1, which provides all revenue bills must originate in the House.

POINT OF ERROR NO. 4

The evidence is insufficient to support a conviction under Counts 4, 5, 7, 8 (against Jordan), 27 (against Garza), and 44, 48, 49, 50, 51, 52 (against Muniz).

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
McALLEN DIVISION

UNITED STATES OF AMERICA,	§	
	§	
PLAINTIFF	§	
V.	§	
	§	
MARGARITO ALVAREZ,	§	
URBANO ARREDONDO III,	§	
HUMBERTO SERGIO GARZA,	§	CRIMINAL NO.
GARRY BEN JORDAN,	§	M-87-17
JOSE FERNANDO MORAIDA,	§	
NOE MUNIZ,	§	
VICTOR MUNOZ,	§	
FERNANDO PENA, and	§	
CIRO ANGEL RIVERA,	§	
	§	
DEFENDANTS	§	

INDICTMENT

The Grand Jury Charges:

COUNT ONE

From on or about December 15, 1982, to on or about April 10, 1986, in the Southern District of Texas and within the jurisdiction of the Court, Defendants

MARGARITO ALVAREZ,
URBANO ARREDONDO III,
HUMBERTO SERGIO GARZA,
GARRY BEN JORDAN,
JOSE FERNANDO MORAIDA,
NOE MUNIZ,
VICTQR MUNOZ,
FERNANDO PENA, and
CIRO ANGEL RIVERA, coconspirators,

did knowingly and willfully conspire and agree together with Alejandro Barrera, Roberto Escobar, Fidel Galvan, Luis Angel Gonzales, Roel Gonzales, Grisel M. Marks, Juan Angel Morales, Juan Angel Ramos, Jr., Luis Alonzo Ramos, Jose Francisco Rodriguez, Benjamin Rosa, and Jesus Rosa, coconspirators not named as defendants, and with other persons unknown to the grand jurors, to violate Title 18, United States Code, Section 924(a), that is, to knowingly make false statements and representations with respect to the information required by the provisions of Chapter 44 of Title 18, United States Code, to be kept in the records of Amando Pena, Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, a federally licensed firearms dealer.

NAMES AND MEANS

It was a part of the conspiracy that Defendants GARRY BEN JORDAN, HUMBERTO SERGIO GARZA, CIRO ANGEL RIVERA, and VICTOR MUNOZ would recruit persons to sign ATF Forms 4473 as the purported transferees (buyers) of firearms from Amando Pena, Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, who was licensed as a dealer in firearms under Chapter 44 of Title 18, United States Code.

It was a part of this conspiracy that these persons who were recruited to sign the ATF Forms 4473 as the purported transferees (buyers) of firearms would be paid money for their services and signatures.

It was further a part of this conspiracy that Defendants GARRY BEN JORDAN, HUMBERTO SERGIO GARZA, NOE MUNIZ, FERNANDO PENA, and URBANO ARREDONDO III, in their capacities as salesmen for said licensed firearms dealer, would sign the said ATF

Forms 4473 as the transferors (sellers) of the described firearms, thereby falsely stating and representing that the described firearms were sold and delivered to the persons named on the said ATF Forms 4473, as the transferees (buyers), when in truth and in fact such firearms were not sold and delivered to the persons named as the transferees (buyers) on the said ATF Forms 4473.

OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the coconspirators committed overt acts, including the following:

1. On or about June 15, 1984, Defendant JOSE FERNANDO MORAIDA, as the purported transferee (buyer), signed one (1) ATF Form 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas.

2. On or about June 15, 1984, in Roma, Texas, Defendant HUMBERTO SERGIO GARZA, in his capacity as a salesman, signed the ATF Form 4473 described in Overt Act #1 as the transferor (seller) of the firearm described on the form, thereby falsely stating and representing that such firearm was sold and delivered to Defendant JOSE FERNANDO MORAIDA, when in fact the firearm was delivered to Defendant MARGARITO ALVAREZ, a convicted felon.

3. Between on or about December 15, 1982, and on or about February 25, 1985, Jesus Rosa was recruited by an unknown person to sign, as the purported transferee (buyer), six (6) blank ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway

83, Roma, Texas, for which signatures he was paid approximately $100.00.

4. Between on or about December 15, 1982, and on or about February 25, 1985, Defendants GARRY BEN JORDAN and HUMBERTO SERGIO GARZA, in their capacities as salesman for said licensed firearms dealer, later signed the ATF Forms 4473 described in Overt Act #3 as the transferors (sellers) of the firearms described on the forms, thereby falsely stating and representing that such firearms were sold and delivered to Jesus Rosa.

5. Between on or about May 24, 1983, and on or about February 13, 1985, Roel Gonzales was recruited by Defendant CIRO ANGEL RIVERA to sign, as the purported transferee

(buyer), six (6) blank ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, for which signatures Roel Gonzales was paid $40.00 apiece.

6. Between on or about May 24, 1983, and on or about February 13, 1985, Defendants GARRY BEN JORDAN, HUMBERTO SERGIO GARZA, and NOE MUNIZ, in their capacities as salesmen for said licensed firearms dealer, signed the ATF Forms 4473 described in Overt Act #5 as the transferors (sellers) of the firearms described on the forms, thereby falsely stating and representing that such firearms were sold and delivered to Roel Gonzales.

7. Between on or about August 24, 1983, and on or about November 8,

1983, Grisel M. Marks was recruited by Defendants VICTOR MUNOZ and GARRY BEN JORDAN to sign, as the purported transferee (buyer), four (4) blank ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, for which she was paid $100.00 by Defendant VICTOR MUNOZ.

8. Between on or about August 24, 1983, and on or about November 8, 1983, Defendants GARRY BEN JORDAN, HUMBERTO SERGIO GARZA, and NOE MUNIZ, in their capacities as salesmen for said licensed firearms dealer, later signed the ATF Forms 4473 described in Overt Act #7 as the transferors (sellers) of the firearms described on the forms, thereby falsely stating and representing

that such firearms were sold and delivered to Grisel M. Marks.

9. Between on or about October 28, 1983, and on or about July 10, 1984, Roberto Escobar was recruited by Defendant GARRY BEN JORDAN to sign, as the purported transferee (buyer), six (6) blank ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas.

10. Between on or about October 28, 1983, and on or about July 10, 1984, Defendants GARRY BEN JORDAN, HUMBERTO SERGIO GARZA, and NOE MUNIZ, in their capacities as salesmen for said licensed firearms dealer, signed the ATF Forms 4473 described in Overt Act #9 as the transferors (sellers) of the firearms described on the forms, thereby falsely stating and

representing that such firearms were sold and delivered to Roberto Escobar.

11. Between on or about December 18, 1983, and on or about May 28, 1985, Fidel Galvan was recruited by Defendant GARRY BEN JORDAN to sign, as the purported transferee (buyer), ten (10) blank ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, for which Fidel Galvan was given a television set.

12. Between on or about December 18, 1983, and on or about May 28, 1985, Defendants GARRY BEN JORDAN, HUMBERTO SERGIO GARZA, NOE MUNIZ, FERNANDO PENA, and URBANO ARREDONDO III, in their capacities as salesmen for said licensed firearms dealer, signed the ATF

Forms 4473 described in Overt Act #11 as the transferors (sellers) of the firearms described on the forms, thereby falsely stating and representing that such firearms were sold and delivered to Fidel Galvan.

13. Between on or about May 21, 1984, and on or about February 6, 1985, Benjamin Rosa was recruited by an unknown person to sign, as the purported transferee (buyer), six (6) blank ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, for which signatures he was paid $150.00.

14. Between on or about May 21, 1984, and on or about February 6, 1985, Defendants GARRY BEN JORDAN, HUMBERTO SERGIO GARZA, and NOE MUNIZ, in their capacities as

salesmen for said licensed firearms dealer, signed the ATF Forms 4473 described in Overt Act #13 as the tranferors (sellers) of the firearms described on the forms, thereby falsely stating and representing that such firearms were sold and delivered to Benjamin Rosa.

15. Between on or about July 28, 1984, and on or about August 29, 1984, Alejandro Barrera was recruited by an unknown person to sign, as the purported transferee (buyer), two (2) blank ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, for which signatures he was paid $100.00.

16. Between on or about July 28, 1984, and on or about August 29, 1984, Defendants GARRY BEN JORDAN and

HUMBERTO SERGIO GARZA, in their capacities as salesmen for said licensed firearms dealer, signed the ATF Forms 4473 described in Overt Act #15 as the transferors (sellers) of the firearms described on the forms, thereby falsely stating and representing that such firearms were sold and delivered to Alejandro Barrera.

17. Between on or about August 26, 1984, and on or about January 7, 1985, Luis Angel Gonzales was recruited by Defendant CIRO ANGEL RIVERA to sign, as the purported transferee (buyer), five (5) blank ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas.

18. Between on or about August 26, 1984, and on or about January 7, 1985, Defendants GARRY BEN JORDAN,

HUMBERTO SERGIO GARZA, and NOE MUNIZ, in their capacities as salesmen for said licensed firearms dealer, signed the ATF Forms 4473 described in Overt Act #17 as the transferors (sellers) of the firearms described on the forms, thereby falsely stating and representing that such firearms were sold and delivered to Luis Angel Gonzales.

19. Between on or about November 3, 1984, and on or about September 3, 1985, Jose Francisco Rodriguez was recruited by Defendant CIRO ANGEL RIVERA to sign, as the purported transferee (buyer), four (4) blank ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, for which signatures Jose

Francisco Rodriguez was paid $40.00 per form.

20. Between on or about November 3, 1984, and on or about September 3, 1985, Defendants GARRY BEN JORDAN, HUMBERTO SERGIO GARZA, and NOE MUNIZ, in their capacities as salesmen for said licensed firearms dealer, signed the ATF Forms 4473 described in Overt Act #19 as the transferors (sellers) of the firearms described on the forms, thereby falsely stating and representing that such firearms were sold and delivered to Jose Francisco Rodriguez.

21. Between on or about November 9, 1984, and on or about March 28, 1985, Juan Angel Ramos, Jr., was recruited by Defendant CIRO ANGEL RIVERA to sign, as the purported transferee (buyer), six (6) blank

ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, for which signatures Juan Angel Ramos, Jr., was paid $40.00 each.

22. Between on or about November 9, 1984, and on or about March 28, 1985, Defendants GARRY BEN JORDAN, HUMBERTO SERGIO GARZA, and NOE MUNIZ, in their capacities as salesmen for said licensed firearms dealer, signed the ATF Forms 4473 described in Overt Act #21 as the transferors (sellers) of the firearms described on the forms, thereby falsely stating and representing that such firearms were sold and delivered to Juan Angel Ramos, Jr.

23. Between on or about December 10, 1984, and on or about December 29, 1984, Juan Angel Morales was

recruited by Defendants CIRO ANGEL RIVERA to sign, as the purported transferee (buyer), two (2) blank ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas.

24. Between on or about December 10, 1984, and on or about December 29, 1984, Defendants GARRY BEN JORDAN and HUMBERTO SERGIO GARZA, in their capacities as salesmen for said licensed firearms dealer, signed the ATF Forms 4473 described in Overt Act #23 as the transferors (sellers) of the firearms described on the forms, thereby falsely stating and representing that such firearms were sold and delivered to Juan Angel Morales.

25. Between on or about December 28, 1984, and on or about February 6,

1985, Antonio Rodriguez was recruited by an unknown person to sign, as the purported transferee (buyer), two (2) blank ATF Forms 4473 at Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas.

26. Between on or about December 28, 1984, and on or about February 6, 1985, Defendants GARRY BEN JORDAN and HUMBERTO SERGIO GARZA, in their capacities as salesmen for said licensed firearms dealer, signed the ATF Forms 4473 described in Overt Act #25 as the transferors (sellers) of the firearms described on the forms, thereby falsely stating and representing that such firearms were sold and delivered to Antonio Rodriguez.

[Violation: Title 18, United States Code, Section 371]

COUNTS TWO through NINETEEN

On or about the following dates, in the Southern District of Texas and within the jurisdiction of the Court, Defendant

GARRY BEN JORDAN

did knowingly make false statements and representations with respect to information required by the provisions of Chapter 44, Title 18, United States Code, to be kept in the records of Amando Pena, Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, a federally licensed firearms dealer, in that he did falsely state and represent on the following Department of the Treasury, ATF Forms 4473, that the following described firearms were sold and delivered on or about said dates to the following persons named on the forms as transferees (buyers), when in truth and in fact, as Defendant GARRY BEN JORDAN well

knew, said firearms were not sold and delivered to the persons named as the transferees (buyers) of the firearms on the said ATF Forms 4473.

COUNT	FORM 4473 DATE	TRANSFEREE (BUYER)	FIREARM
2	02-25-85	Jesus Rosa	Clayco Sports, AKS rifle, 7.62 x 39 cal., Ser.# 105322
3	11-20-84	Roel Gonzales	Colt, AR15 rifle, .223 cal., Ser.# SP 210414
4	08-24-83	Grisel M. Marks	Colt, AR15 rifle, .223 cal., Ser.# SP 194122
5	11-08-83	Grisel M. Marks	Colt, AR15 rifle, .223 cal., Ser.# SP 197146
6	05-12-84	Roberto Escobar	Colt, AR15 rifle, .223 cal., Ser.# SP 206562
7	12-15-84	Fidel Galvan	Colt, AR15 rifle, .223 cal., Ser.# SP 210448
8	02-26-85	Fidel Galvan	Winchester, 12 gauge shotgun Ser.# L1344403

COUNT	FORM 4473 DATE	TRANSFEREE (BUYER)	FIREARM
9	05-21-84	Benjamin Rosa	Colt, .38 Super cal. pistol, Ser.# 80BS27948
10	02-06-85	Benjamin Rosa	Colt, .380 cal. pistol, Ser.# RC19800
11	08-29-84	Alejandro Barrera	Colt, AR15 rifle, .223 cal., Ser.# SP 208062
12	10-10-84	Luis Angel Gonzales	Colt, .38 Super cal. pistol, Ser.# 70S50457
13	11-02-84	Luis Angel Gonzales	Colt, AR15 rifle, .223 cal., Ser.# SP 211021
14	09-03-85	Jose Francisco Rodriguez	Colt, AR15 rifle, .223 cal., Ser.# SP 210316
15	11-29-84	Juan Angel Ramos, Jr.	Colt, AR15 rifle, .223 cal., Ser.# SP 210717
16	01-28-85	Juan Angel Ramos, Jr.	Colt, AR15 rifle, .223 cal., Ser.# SP 211191
17	03-28-85	Juan Angel Ramos, Jr.	Colt, AR15 rifle, .223 cal., Ser.# SP 212015

COUNT	FORM 4473 DATE	TRANSFEREE (BUYER)	FIREARM
18	12-29-84	Juan Angel Morales	Clayco Sports, AKS rifle, 7.62x39 cal., Ser.# 105308
19	12-28-84	Antonio Rodriguez	Clayco Sports, AKS rifle, 7.62x39 cal., Ser.# 101336

Defendant CIRO ANGEL RIVERA did unlawfully, knowingly, and willfully aid, abet, induce, and procure the commission of the offenses set out in Counts Three, Twelve, Thirteen, and Fifteen through Eighteen.

Defendant VICTOR MUNOZ did unlawfully, knowingly, and willfully aid, abet, induce, and procure the commission of the offenses set out in Counts Four and Five.

[Violation: Title 18, United States Code, Section 924(a) and 2]

COUNTS TWENTY through FORTY-ONE

On or about the following dates, in the Southern District of Texas and within the jurisdiction of the Court, Defendant

HUMBERTO SERGIO GARZA

did knowingly make false statements and representations with respect to information required by the provisions of Chapter 44, Title 18, United States Code, to be kept in the records of Amando Pena, Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, a federally licensed firearms dealer, in that he did falsely state and represent on the following Department of the Treasury, ATF Forms 4473, that the following described firearms were sold and delivered on or about said dates to the following persons named on the forms as transferees (buyers), when in truth and in fact, as Defendant HUMBERTO SERGIO GARZA well knew, said firearms were not sold and delivered to the persons named as the transferees (buyers) of the firearms on the said ATF Forms 4473.

COUNT	FORM 4473 DATE	TRANSFEREE (BUYER)	FIREARM
20	06-15-84	Jose Fernando Moraida	Browning, 12 gauge shotgun, Ser.#03803PW211
21	03-18-84	Jesus Rosa	Pietro Beretta, .380 cal. pistol, Ser.# B93089Y
22	11-18-84	Jesus Rosa	Colt, .38 Super cal. pistol, Ser.# 80BS27665
23	11-30-84	Jesus Rosa	Colt, .38 Super cal. pistol, Ser.# FG36459
24	05-24-83	Roel Gonzales	Jennings .22 cal. pistol, Ser.# 043227
25	06-14-84	Roel Gonzales	Colt, AR15 rifle, .223 cal., Ser.# SP 208848
26	02-13-85	Roel Gonzales	Colt, .380 cal. pistol, Ser.# RC 37784
27	10-27-83	Grisel M. Marks	Colt, AR15 rifle, .223 cal., Ser.# SP 197112
28	10-28-83	Roberto Escobar	Colt, AR15 rifle, .223 cal., Ser.# SP 192868

COUNT	FORM 4473 DATE	TRANSFEREE (BUYER)	FIREARM
29	12-10-83	Roberto Escobar	Colt, AR15 rifle, .223 cal., Ser.# SP 192923
30	01-28-85	Fidel Galvan	Browning, 9MM pistol, Ser.#425PY08980
31	12-10-84	Benjamin Rosa	Colt, AR15 rifle, .223 cal., Ser.# SP 210329
32	12-28-84	Benjamin Rosa	Clayco Sports, AKS rifle, 7.62x39 cal., Ser.# 104658
33	12-28-84	Benjamin Rosa	Colt, .38 Super cal. pistol, Ser.# 80BS23071
34	07-28-84	Alejandro Barrera	Colt, AR15 rifle, .223 cal., Ser.# SP 209927
35	08-26-84	Luis Angel Gonzales	Colt, AR15 rifle, .223 cal., Ser.# SP 209935
36	11-03-84	Jose Francisco Rodriguez	Clayco Sports, AKS rifle, 7.62x39 cal., Ser.# 102160

COUNT	FORM 4473 DATE	TRANSFEREE (BUYER)	FIREARM
37	11-29-84	Jose Francisco Rodriguez	Colt, AR15 rifle, .223 cal., Ser.# SP 210483
38	11-09-84	Juan Angel Ramos, Jr.	Clayco Sports, AKS rifle, 7.62x39 cal., Ser.# 102340
39	12-15-84	Juan Angel Ramos, Jr.	Clayco Sports, AKS rifle, 7.62x39 cal., Ser.# 105000
40	12-10-84	Juan Angel Morales	Colt, AR15 rifle, .223 cal., Ser.# SP 210511
41	02-06-85	Antonio Rodriguez	Colt, AR15 rifle, .223 cal., Ser.# 212499

Defendant CIRO ANGEL RIVERA did unlawfully, knowingly, and willfully aid, abet, induce, and procure the commission of the offenses set out in Counts Twenty-Four through Twenty-Six, Thirty-Five, and Thirty-Eight through Forty.

Defendant VICTOR MUNOZ did unlawfully, knowingly, and willfully aid, abet, induce, and procure the commission of the offense set out in Count Twenty-Seven.

[Violation: Title 18, United States Code, Section 924(a) and 2]

COUNTS FORTY-TWO through FIFTY-NINE

On or about the following dates, in the Southern District of Texas and within the jurisdiction of the Court, Defendant

NOE MUNIZ

did knowingly make false statements and representations with respect to information required by the provisions of Chapter 44, Title 18, United States Code, to be kept in the records of Amando Pena, Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, a federally licensed firearms dealer, in that he did falsely state and represent on the following Department of the Treasury, ATF Forms 4473, that the following described firearms were

sold and delivered on or about said dates to the following persons named on the forms as transferees (buyers), when in that in truth and in fact, as Defendant NOE MUNIZ well knew, said firearms were not sold and delivered to the persons named as the transferees (buyers) of the firearms on the said ATF Forms 4473.

COUNT	FORM 4473 DATE	TRANSFEREE (BUYER)	FIREARM
42	07-20-84	Roel Gonzales	Colt, .38 Super cal. pistol, Ser.# FG24755
43	11-29-84	Roel Gonzales	Colt, AR15 rifle, .223 cal., Ser.# SP 210343
44	10-17-83	Grissel M. Marks	Colt, AR15 rifle, .223 cal., Ser.# SP 197086
45	11-05-83	Roberto Escobar	Colt, AR15 rifle, .223 cal., Ser.# SP 192884
46	11-15-83	Roberto Escobar	Colt, AR15 rifle, .223 cal., Ser.# SP 193364

COUNT	FORM 4473 DATE	TRANSFEREE (BUYER)	FIREARM
47	07-10-84	Roberto Escobar	Colt, AR15 rifle, .223 cal., Ser.# SP 190676
48	12-28-83	Fidel Galvan	Browning, 9MM pistol, Ser.#245P275802
49	03-28-84	Fidel Galvan	Colt, .45 cal. pistol, Ser.# FG16592
50	10-18-84	Fidel Galvan	Colt, .38 Super cal. pistol, Ser.# 70S47609
51	02-13-85	Fidel Galvan	Browning, .380 cal. pistol, Ser.#425PY21876
52	04-10-85	Fidel Galvan	Mossberg, 12 gauge shotgun, Ser.# 5431416
53	11-20-84	Benjamin Rosa	Colt, .38 Super cal. pistol, Ser.# 80BS27168
54	11-30-84	Luis Angel Gonzales	Colt, AR15 rifle, .223 cal., Ser.# SP 211010
55	01-07-85	Luis Angel Gonzales	Interdynamic, 9MM cal. pistol, Ser.# 24719

COUNT	FORM 4473 DATE	TRANSFEREE (BUYER)	FIREARM
56	02-23-85	Jose Francisco Rodriguez	RB Industries, .25 cal. pistol, Ser.# 005895
57	12-03-84	Juan Angel Ramos, Jr.	Clayco Sports, AKS rifle, 7.62x39 cal., Ser.# 104906
58	10-12-84	Juan Angel Morales	Browning, 9MM pistol, Ser.#245PY17267
59	06-28-85	Juan Angel Morales	Clayco Sports, AKS rifle, 7.62x39 cal., Ser.# 104502

Defendant CIRO ANGEL RIVERA did unlawfully, knowingly, and willfully aid, abet, induce, and procure the commission of the offenses set out in Counts Forty-Two, Forty-Three, Fifty-Four, Fifty-Five, and Fifty-Seven through Fifty-Nine.

Defendant VICTOR MUNOZ did unlawfully, knowingly, and willfully aid, abet, induce, and procure the commission of the offense set out in Count Forty-Four.

[Violation: Title 18, United States Code, Section 924(a) and 2]

COUNT SIXTY

On or about February 26, 1985, in the Southern District of Texas and within the jurisdiction of the Court, Defendant

FERNANDO PENA

did knowingly and unlawfully make a false statement and representation with respect to information required by the provisions of Chapter 44, Title 18, United States Code, to be kept in the records of Amando Pena, Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, a federally licensed firearms dealers, in that he did falsely state and represent on a Department of the Treasury, ATF Form 4473, that a Colt, AR15 rifle, .223 caliber, serial number SP 212788, was sold and delivered to Fidel Galvan, as transferee (buyer), when in truth and in fact, as Defendant FERNANDO PENA well knew, said

firearm was not sold and delivered to Fidel Galvan.

[Violation: Title 18, United States Code, Section 924(a)]

COUNT SIXTY-ONE

On or about May 28, 1985, in the Southern District of Texas and within the jurisdiction of the Court, Defendant

URBANO ARREDONDO III

did knowingly and unlawfully make a false statement and representation with respect to information required by the provisions of Chapter 44, Title 18, United States Code, to be kept in the records of Amando Pena, Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, a federally licensed firearms dealers, in that he did falsely state and represent on a Department of the Treasury, ATF Form 4473, that a Browning, 9MM pistol, serial number 245PZ65304, was sold and delivered to Fidel Galvan, as transferee (buyer), when in truth

and in fact, as Defendant URBANO ARREDONDO III well knew, said firearm was not sold and delivered to Fidel Galvan.

[Violation: Title 18, United States Code, Section 924(a)]

COUNT SIXTY-TWO

On or about June 15, 1984, in the Southern District of Texas and within the jurisdiction of the Court, Defendant

JOSE FERNANDO MORAIDA

did knowingly and unlawfully make false statements and representations with respect to information required by the provisions of Chapter 44, Title 18, United States Code, to be kept in the records of Amando Pena, Riverview True Value Hardware & Family Center, 1005 East Highway 83, Roma, Texas, a federally licensed firearms dealer, in that he did falsely state and represent on a Department of Treasury, ATF Form 4473, that he was the purported transferee (buyer) of a Browning, 12 gauge shotgun, serial number

03803PW211, when in truth and in fact, as Defendant JOSE FERNANDO MORAIDA well knew, he was not the actual transferee for said firearm.

[Violation: Title 18, United States Code, Section 924(a)]

A TRUE BILL

/s/ Billy Friend
FOREMAN

HENRY K. ONCKEN
UNITED STATES ATTORNEY

/s/
CHRISTOPHER LEE MILNER
ASSISTANT UNITED STATES ATTORNEY